

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Consumer Protection and Safety
Division**

RESOLUTION UEB-001

R E S O L U T I O N

RESOLUTION UEB-001. Adoption of a citation program for enforcing compliance with Public Utilities Code Section 2889.5

Background

On March 2, 2006, the Commission adopted Decision 06-03-013, Market Rules to Empower Telecommunications Consumers and to Prevent Market Fraud. In its decision, the Commission ordered the Director of Consumer Protection and Safety Division (CPSD) to investigate the feasibility and effectiveness of a citation forfeiture program for violations of the anti-slamming statutes. (Table A, D.06-03-013.)

Public Utilities Code Section 2889.5 contains procedures that utilities must follow to change a consumer's presubscribed telecommunications carrier. The Commission has on occasion delegated authority to its staff to enforce compliance with various regulatory requirements. This resolution adopts a citation program for enforcing compliance with third party verification requirements of Public Utilities Code Section 2889.5(a)(3) and (7) and Commission regulations applicable to this code section under the administration of the Director of CPSD. This citation program does not cover all violations that may occur subject to Public Utilities Code Section 2889.5, nor is it intended to.

Discussion

The following procedures are adopted for the citation program:

1. The Director of CPSD, or his/her designee, is hereby authorized to issue warning letters or citations to telecommunications providers and their representatives subject to the requirements of Public Utilities Code Sections 2889.5 for the following specified violations of those sections and applicable Commission regulations
 - a. Failure by the telecommunications provider to provide to the Commission a third party verification tape (TPV) or other acceptable evidence showing that a change in telecommunications service provider has been made in compliance with Public Utilities Code Sections 2889.5; or
 - b. Failure by the telecommunications provider to verify the specific information below:
 - i. the identity of the subscriber;
 - ii. confirmation that the person on the call is authorized to make the carrier change;
 - iii. confirmation that the person on the call wants to make the carrier change;
 - iv. the names of the carriers affected by the change (not including the name of the displaced carrier);
 - v. the telephone numbers to be switched; and
 - vi. the types of service involved.¹
2. The Director of CPSD or his/her designee is authorized to draft a citation and present it to the telecommunications provider. Prior to issuing a citation, CPSD should inform the telecommunications provider that a citation will be issued and the basis therefor. If after investigation, CPSD finds violations of paragraph 1.a. or 1.b. (above), CPSD is hereby authorized to issue a citation and levy a \$500 - \$1000 fine consistent with the requirements set forth in Public Utilities Code Section 2107. Each third party verification tape (TPV) that fails to meet the above criteria is

¹ Code of Federal Regulations (47 CFR 64.1120(c)(3)(iii)).

considered a separate violation. The citation process may be used only until the violations in issue total \$20,000 per carrier in any 90 day period.

3. Citations shall be sent by first class mail to the telecommunications provider's designated Commission contact or the address for the service of process of the corporation or LLC or other business entity filed with the Secretary of State of California. Citations shall clearly delineate the alleged violations and the fine amount and shall summarize CPSD's evidence.
4. The respondent (the telecommunications provider) shall have the opportunity to appeal the citation and to request a hearing as detailed below. Citations shall include an explanation of how to file an appeal, including an explanation of the respondent's right to have a hearing, to have a representative at the hearing, to request a transcript, to request an interpreter, and a form for requesting an interpreter.
5. Each citation shall be supported by evidence (documents, audio tapes, or other evidence) documenting any alleged violations. This information, if not voluminous, shall be provided with the citation. If the evidence is voluminous, CPSD may summarize the evidence, but will make the evidence itself available for timely inspection by the respondent.
6. Within 30 calendar days from the date of the citation, the respondent shall pay the fine or appeal the citation to the Director of CPSD. CPSD may allow for payment of citation penalties in installments in appropriate cases.
7. Appeals will be conducted as follows:
 - a. The appeal shall be brought by serving notice upon the Director of CPSD, and the respondent shall indicate the grounds for the appeal in the notice. CPSD shall promptly advise the Chief Administrative Law Judge upon receipt of a timely Notice of Appeal.
 - b. The Chief Administrative Law Judge shall designate an Administrative Law Judge to hear appeals under this resolution.
 - c. Upon advice from CPSD that a citation has been appealed, the Chief Administrative Law Judge shall promptly forward the matter

to the Administrative Law Judge, who shall set the matter for hearing on the first Citation Calendar not less than 10 days after advice of the appeal is received from CPSD. The Administrative Law Judge may, for good cause shown or upon agreement of the parties, grant a reasonable continuance of the hearing.

- d. Appeals of citations shall be heard in the Commission's San Francisco or Los Angeles courtrooms on regularly scheduled days. Appeals shall be calendared accordingly, except that a particular matter may be re-calendared at the direction of the Administrative Law Judge.
- e. The respondent may order a transcript of the hearing, and shall pay the cost of the transcript in accordance with the Commission's specified procedures.
- f. Upon a good faith showing of language difficulty, the respondent shall be entitled to the services of an interpreter at the Commission's expense upon written request to the Chief Administrative Law Judge not less than three business days prior to the date of the hearing.
- g. The respondent may be represented at the hearing by an attorney or other representative, but any such representation shall be at the respondent's expense.
- h. At an evidentiary hearing, CPSD bears the burden of proof and accordingly shall open and close. The Administrative Law Judge may, in his or her discretion to better ascertain truth, alter the order of presentation. Formal rules of evidence do not necessarily apply, and all relevant and reliable evidence may be received in the discretion of the Administrative Law Judge.
- i. Ordinarily, the case shall be submitted at the close of the hearing. The Administrative Law Judge, upon a showing of good cause, may keep the record open for a reasonable period to permit a party to submit additional evidence or argument.
- j. The Administrative Law Judge shall issue an order resolving the appeal not later than 30 days after the appeal is submitted, and the

order shall be placed on the first available agenda, consistent with the Commission's applicable rules.

- k. The subscriber's right to file his or her own action pursuant to Public Utilities Code section 1702.1 shall not be affected.
8. If the respondent fails to pay the full amount of the citation fine or to appeal within 30 calendar days, the respondent shall be in default, and the fine contained in the citation shall become final. If the respondent is in default, CPSD may take action to have the Commission revoke the respondent's authority, and/or may take any other action provided by law to recover unpaid fines and ensure compliance with applicable statutes and Commission regulations, including ordering the billing telephone company or companies that are providing billing and collection services to cease billing and collection services for the respondent pursuant to Public Utilities Code Section 2889.9(f).
 9. From the date that CPSD issues a citation to and including the date when the final order is issued, neither the respondent nor the investigator, or agent or other person on behalf of the respondent or investigator or any CPSD staff member, may communicate regarding the appeal, orally or in writing, with a Commissioner, Commissioner's advisor, or Administrative Law Judge, except as expressly permitted under these procedures.
 10. CPSD will review and report to the Executive Director on the effectiveness of the citation program no later than 18 months after this resolution is adopted.
 11. A copy of this Resolution shall be sent to all telecommunications providers subject to requirements of Public Utilities Code Sections 2889.5.

Notice

Comments

THEREFORE, IT IS ORDERED that:

The Citation Program described above is hereby adopted.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on _____. The following Commissioners approved it:

/s/ STEVE LARSON

STEVE LARSON
Executive Director

MICHAEL R. PEEVEY

President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE CHONG
Commissioners